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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,039

05/06/2005

Paulo Do Rosario

0678-1001

2398

466

7590

06/29/2009

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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

06/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,039	<b>Applicant(s)</b> DO ROSARIO ET AL.	
	<b>Examiner</b> J. Casimer Jacyna	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 15-26, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 15-26, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/2/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 13, 15-18, 21-25, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Goda 3,741,444. Goda discloses a dispensing device including a reservoir 10, an ejection assembly 40 that is supported on a wall 33 of the reservoir, an actuating member push-button 44 with a vertical actuating direction on the central axis of the reservoir 10, a flexible connecting tube connected to the actuating member at a first end horizontal direction 60 and a second end 75 connected to an outlet member 70 in a second and different direction that is adjustable by the user orientation of arm 99 and can be adjusted to a position that does not extend in the same vertical flat plane as a line directly connecting the actuating member and the outlet member wherein the outlet member is fixedly connected to the reservoir at 73. In regard to claims 32 and 33, Goda has a dip-tube 61, an outlet sleeve into which 60 is inserted, and a nozzle 81 that is arranged horizontally as claimed with respect to the support 70 and the overall device.
3. Claims 19, 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goda 3,741,444 in view of Lee 2003/0160070. Goda discloses a dispensing device substantially as claimed but does not disclose the reservoir to be non-circular. However, Lee teaches another pump dispenser that is non-circular as shown in figures 4 and 7. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the reservoir of Goda could be non-circular as, for example, taught by Lee because one of ordinary skill in the art would have considered

the rectangular and oval shapes of the Lee reservoir as shown in figures 4 and 7 as art recognized equivalents that would work equally well for the Goda reservoir with a high probability of success and would have been an obvious variation to try in the Goda dispenser.

4. Claims 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell 2,655,287. Campbell discloses a dispensing device including a housing that contains a reservoir 10, a pump 60, a dip tube 50, a manually depressed push-button 12, an horizontal outlet sleeve 107, a flexible tube 14 connected to the sleeve at a first end and a horizontally arranged nozzle 20 as shown in figure 1 connected at a second end 108 of tube 14 wherein the nozzle 20 is horizontally connected to various fixtures 26 as shown in figure 1 wherein at least some of the fixtures will be oriented in a direction that is different from the horizontal sleeve 107 as claimed.

5. Claims 13, 15-23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell 2,655,287 in view of Goda 3,741,444. Campbell discloses a pump dispensing device substantially as claimed but does not disclose the pump or the actuator 62 to be aligned along the central axis of the reservoir. However, Goda teaches another pump dispenser having the actuator and pump 43, 44 aligned along the central axis of the reservoir 10 for the purpose balancing the force and weight distribution of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Campbell with a centrally located actuator and pump as, for example, taught by Goda in order to

balance the force and weight distribution of the device. In regard to claim 19, the reservoir is oval as shown in figure 2.

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754